

COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

OPEN MEETING ITEM  
**ORIGINAL**



0000071671

22

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

**DOCKETED**

DATE: APRIL 20, 2007

APR 20 2007

DOCKET NO: WS-01303A-06-0242

DOCKETED BY

NR

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA-AMERICAN WATER COMPANY  
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 30, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 8, 2007 and MAY 9, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

RECEIVED

2007 APR 20 P 2:12

AZ CORP COMMISSION  
DOCUMENT CONTROL

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
9 ARIZONA-AMERICAN WATER COMPANY, AN  
10 ARIZONA CORPORATION, FOR AN  
11 EXTENSION OF THE SERVICE AREA UNDER  
12 ITS EXISTING CERTIFICATE OF  
13 CONVENIENCE AND NECESSITY TO PROVIDE  
14 WATER AND SEWER UTILITY SERVICES IN  
15 ITS AGUA FRIA WATER AND WASTEWATER  
16 DISTRICTS.

DOCKET NO. WS-01303A-06-0242

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

12 DATE OF HEARING: April 3, 2007  
13 PLACE OF HEARING: Phoenix, Arizona  
14 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
15 APPEARANCES: Mr. Craig A. Marks, CRAIG A. MARKS PLC, on  
16 behalf of Arizona-American Water Company; and  
17 Mr. Charles Hains, Staff Attorney, Legal Division,  
18 on behalf of the Utilities Division of the Arizona  
Corporation Commission.

19 **BY THE COMMISSION:**

20 On April 12, 2006, Arizona-American Water Company ("Applicant" or "Company") filed  
21 with the Arizona Corporation Commission ("Commission") an application for an extension of its  
22 existing Certificate of Convenience and Necessity ("Certificate") to provide public water and public  
23 wastewater utility service through its Agua Fria Water and Wastewater Districts in various parts of  
24 Maricopa County, Arizona.

25 On May 9, 2006, the Commission's Utilities Division ("Staff") issued a notice of  
26 insufficiency which indicated that the Company's application had not met the sufficiency  
27 requirements of A.A.C. R14-2-411(C), and A.A.C. R14-2-610(C).

28 On August 1, 2006, Staff issued a second notice of insufficiency.

1 On September 15, 2006, Staff issued a letter of administrative completeness to the Company.

2 On September 19, 2006, by Procedural Order, the proceeding was scheduled for a hearing on  
3 November 20, 2006.

4 On October 18, 2006, the Company filed certification that it had provided public notice of the  
5 proceeding pursuant to the Commission's Procedural Order.

6 On November 7, 2006, the Company filed a Motion for an Indefinite Continuance ("Motion")  
7 pending the outcome of another proceeding in Docket No. W-01303A-05-0718, a proceeding  
8 concerning issues which are somewhat related. The Company, in its Motion, requested the hearing  
9 scheduled on November 20, 2006, be held to take public comment only and the evidentiary portion of  
10 the proceeding continued. The Company further indicated that Staff was in agreement with its  
11 Motion and further agreed to the suspension of the time-clock rule.

12 On November 20, 2006, a full public hearing was convened before a duly authorized  
13 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and  
14 Staff appeared with counsel. Public comment was taken and the Company's Motion was granted  
15 with the time-clock suspended.

16 On January 23, 2007, the Company filed a request to reconvene the evidentiary portion of the  
17 proceeding.

18 On January 29, 2007, by Procedural Order, the hearing was scheduled to resume on April 3,  
19 2007.

20 On April 3, 2007, the hearing resumed with the Company and Staff present with counsel. At  
21 the conclusion of the hearing, the matter was taken under advisement pending submission of a  
22 Recommended Opinion and Order to the Commission.

23 \* \* \* \* \*

24 Having considered the entire record herein and being fully advised in the premises, the  
25 Commission finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. Pursuant to authority granted by the Commission, the Company is an Arizona  
28 corporation which is engaged in the business of providing water and wastewater service in various

1 parts of Maricopa, Mohave and Santa Cruz Counties, Arizona.<sup>1</sup>

2       2.     On April 12, 2006, the Company, on behalf of its Agua Fria Districts,<sup>2</sup> filed an  
3 application for an extension of its Certificate in the Town of Buckeye in Maricopa County to provide  
4 water and wastewater service to an area which is marked Exhibit A attached hereto and incorporated  
5 herein by reference.

6       3.     Notice of the application was provided in accordance with the law.

7       4.     On October 20, 2006, Staff filed its Staff Report recommending conditional approval  
8 of the application following a hearing.

9       5.     Pulte Home Corporation ("Pulte") owns approximately 444 acres which are described  
10 in Exhibit A and has requested that the Company provide water and wastewater service to a new  
11 residential subdivision, Sienna Hills, which will contain approximately 1,070 residential units, one  
12 commercial parcel and several small landscaped areas. The extension area is six and a half miles  
13 west of Loop 303 and half a mile north of Interstate 10. Sienna Hills will be a master-planned  
14 community and is immediately adjacent to the Verrado community which is served by the Agua Fria  
15 Districts.

16       6.     To finance the new water distribution and wastewater collection facilities, a  
17 combination of advances in aid of construction, contributions and hook-up fees will be used. To deal  
18 with water facility advances, the Company has entered into a main extension agreement ("MXA")  
19 with Pulte for the proposed extension area. An executed extension agreement for water service  
20 between Pulte and the Company was filed with the application as an exhibit. The Company has also  
21 entered into a wastewater extension agreement with Pulte, but wastewater extension agreements do  
22 not require Commission approval.<sup>3</sup>

23       7.     No other municipal or public service corporations provide waster or wastewater  
24 service in the proposed service area described in Exhibit A.

25 \_\_\_\_\_  
26 <sup>1</sup>     The Company is a wholly owned subsidiary of American Water Works, Inc. and provides waster and wastewater  
utility service to approximately 94,000 water and 47,000 wastewater customers in Arizona.

27 <sup>2</sup>     The Agua Fria Districts provide water and wastewater service to approximately 30,000 and 9,000 customers,  
respectively, in the Verrado community and other communities to the west and north of Phoenix.

28 <sup>3</sup>     The water MXA provides for a refund of 10 percent of gross annual revenues for ten years and the wastewater  
MXA provides for a refund of 10 percent of gross annual revenues for eight years.

1           8.       The proposed extension area lies within the Town of Buckeye, and is contiguous to the  
2 Verrado community on its northern and eastern borders.

3           9.       Applicant filed a copy of its franchise from the Town of Buckeye with its application  
4 for the area sought to be certificated herein.

5           10.      According to the Staff Report, and the testimony of a Pulte vice president, Mike Brilz,  
6 Pulte is in the process of developing a well in conjunction with Meritage Homes ("Meritage") at  
7 Meritage's nearby Senita subdivision which Mr. Brilz expects will have at least 300 gallons per  
8 minute ("gpm") of surplus capacity which will be dedicated to the Company's Agua Fria Water  
9 District under the terms of the MXA. Pulte also has available to it other prospective well sites in the  
10 vicinity which can also be connected to the Company's transmission mains to transport surplus water  
11 to Sienna Hills to meet the minimum pump test requirement of 770 gpm needed for the subdivision.

12          11.      In the event the aforementioned are unsuccessful in generating sufficient water for the  
13 project, Pulte, through its Del Webb Corporation ("Del Webb") subsidiary, will assign to the  
14 Company access to Central Arizona Project ("CAP") water which is the primary source of water for  
15 the Anthem community. Del Webb is a party to a 100 year lease with the Ak-Chin Indian  
16 Community and has an option to purchase 6,000 to 10,000 acre feet of water per year and has  
17 committed 7,900 acre-feet to serve Anthem. Previously, in Decision No. 68854 (July 28, 2006), the  
18 Commission approved the extension of the Company's Certificate for its Anthem District to provide  
19 water to Arroyo Vista, a subdivision adjacent to Anthem, which requires a maximum amount of 238  
20 acre-feet of water per year. In that case, Pulte required Del Webb to assign to Applicant the rights to  
21 this water to serve Arroyo Vista, and the Sienna Hills MXA contains a similar provision to ensure  
22 water for the project.

23          12.      The Company's Agua Fria Wastewater District's wastewater plant aka Verrado Water  
24 Reclamation Facility ("WRF") has a design capacity of 450,000 gallons per day ("gpd") and from  
25 January to May 2006 treated approximately 100,000 gpd of wastewater generated by the 1,900  
26 customers connected to the Verrado WRF. It is projected that the facility will experience growth of  
27 approximately 590 new service connections per year for the next five years. As development  
28 continues in the area, the Company is planning to expand its Verrado treatment facilities to 3.72

1 million gallons per day and will need to secure an Aquifer Protection Permit ("APP") that will  
2 indicate approval of the 2007 proposed wastewater facilities.

3 13. Staff reviewed the water and wastewater facilities of the Company's Agua Fria  
4 District and believes that Applicant has adequate water and wastewater facilities and capacity to  
5 provide service to its existing service area and in the extension area described in Exhibit A. The  
6 estimated water line extension costs for the water MXA are projected to be \$3,456,399 and estimated  
7 costs for the wastewater MXA are projected to be \$3,196,952.

8 14. According to the Staff Report, Applicant is in full compliance with the rules of the  
9 Maricopa County Environmental Services Department ("MCESD") and is providing water which  
10 meets the requirements of the Safe Drinking Water Act. Additionally, the Company's Agua Fria  
11 Water District has completed its arsenic treatment facilities and its water is below the new maximum  
12 allowable level for arsenic of 10 parts per billion ("ppb").

13 15. The Arizona Department of Environmental Quality ("ADEQ") which regulates  
14 Applicant's wastewater system indicates that it is in compliance with its regulations.

15 16. The Company is current on the payment of its property taxes, and is in compliance  
16 with its filing requirements with the Commission.

17 17. Staff believes that there is a public need and necessity for water and wastewater  
18 service to the requested extension area and that the issuance of the Certificate is in the public interest  
19 for the area described in Exhibit A.

20 18. Staff recommends the Commission condition approval of the application as follows:

- 21 • that the Company charge its Agua Fria Water and Wastewater Districts' tariffed
- 22 rates and charges in the extension area;
- 23 • that the Company file, within two years of the effective date of this Decision, with
- 24 Docket Control, as a compliance item in this docket, a copy of the developer's
- 25 Certificate of Assured Water Supply for the requested area, where applicable or
- 26 when required by statute; and
- 27 • that the Company file, within two years of the effective date of this Decision, with
- 28 Docket Control, as a compliance item in this docket, a copy of the Aquifer
- Protection Permit issued by ADEQ for the 2007 proposed wastewater facilities
- needed to serve the requested area.

19. Staff further recommends that the Commission's Decision granting the requested Certificate extension to the Company be considered null and void, after due process, should the Company fail to meet the second and third conditions listed above within the time specified.

20. Because an allowance for the property tax expense of the Company is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of utilities have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, the Company should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is current in paying its property taxes in Arizona.

21. We find that Staff's recommendations, as set forth in Findings of Fact Nos. 18 and 19 are reasonable and should be adopted.

## CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

2. The Commission has jurisdiction over the Company and the subject matter of the application.

3. Notice of the application was provided in accordance with the law.

4. There is a public need and necessity for water and wastewater utility service in the proposed service area described in Exhibit A.

5. The Company is a fit and proper entity to receive an extension of its Certificate.

6. The application by the Company to extend its Certificate for the area described in Exhibit A should be granted as recommended by Staff in Findings of Fact Nos. 18 and 19.

## ORDER

IT IS THEREFORE ORDERED that the application of Arizona-American Water Company on behalf of its Agua Fria Water and Wastewater Districts for an amendment to its Certificate of Convenience and Necessity for the operation of water and wastewater utilities in the area more fully

described in Exhibit A is hereby approved provided that Arizona-American Water Company complies with the conditions as set forth in Findings of Fact Nos. 18 and 19.

IT IS FURTHER ORDERED that in the event that Arizona-American Water Company does not timely comply with Findings of Fact Nos. 18 and 19, then the extension of its Certificate of Convenience and Necessity shall be deemed to be null and void after due process.

IT IS FURTHER ORDERED that Arizona-American Water Company shall charge water and wastewater customers in the area more fully described in Exhibit A its tariffed rates and charges authorized previously by the Commission.

IT IS FURTHER ORDERED that Arizona-American Water Company shall annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_, 2007.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_



1 SERVICE LIST FOR: ARIZONA-AMERICAN WATER COMPANY

2 DOCKET NO.: WS-01303A-06-0242

3

4 Craig A. Marks  
CRAIG A. MARKS PLC  
3420 E. Shea Blvd., Suite 200  
5 Phoenix, AZ 85028  
Attorney for Arizona-American Water Company

6

7 Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
8 1200 West Washington Street  
Phoenix, AZ 85007

9

10 Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
11 1200 West Washington  
Phoenix, AZ 85007

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**LEGAL DESCRIPTION**  
**Sienna Hills**

That portion of Section 36, Township 2 North, Range 3 West of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

**BEGINNING** at a found MCDOT aluminum cap accepted as the Northeast corner of Section 2, Township 1 North, Range 3 West, from which a found MCDOT aluminum cap accepted as the Southeast corner of Section 36, Township 2 North, Range 3 West thereof bears North 89 degrees, 20 minutes, 22 seconds East for a distance of 2464.87 feet;

Thence South 89 degrees 14 minutes 15 seconds West for a distance of 176.68 feet along the south line of said section 36 to the South quarter corner of Section 36, Township 2 North, Range 3 West;

Thence North 00 degrees 01 minutes 53 seconds West for a distance of 1473.81 feet along the north – south mid section line of said section 36;

Thence North 24 degrees 25 minutes 35 seconds East for a distance of 1324.49 feet;

Thence North 45 degrees 25 minutes 06 seconds East for a distance of 1000.00 feet;

Thence North 44 degrees 34 minutes 54 seconds West for a distance of 1300.00 feet;

Thence South 45 degrees 25 minutes 06 seconds West for a distance of 1877.87 feet;

Thence South 00 degrees 25 minutes 06 seconds West for a distance of 304.68 feet to a point on the east – west mid section line of said section 36;

Thence North 89 degrees 48 minutes 43 seconds West for a distance of 986.37 feet along said east – west mid section line;

Thence South 00 degrees 01 minutes 08 seconds East for a distance of 1322.20 feet;

Thence North 89 degrees 47 minutes 47 seconds West for a distance of 659.43 feet to a point on the west line of said section 36;

Thence North 00 degrees 00 minutes 52 seconds West for a distance of 1322.02 feet along said west line to the West quarter corner of said Section 36;

Thence continuing along said west line North 00 degrees 06 minutes 34 seconds West for a distance of 2633.15 feet to the Northwest corner of said Section 36;

Thence South 89 degrees 39 minutes 16 seconds East for a distance of 2640.96 feet along the north line of said section 36 to the North quarter corner of said Section 36;

Thence continuing along said north line South 89 degrees 49 minutes 47 seconds East for a distance of 2635.22 feet to the Northeast corner of said Section 36;

Thence South 00 degrees 06 minutes 00 seconds East for a distance of 2626.70 feet along the east line of said section 36 to the East quarter corner of said Section 36;

Thence continuing along said east line South 00 degrees 05 minutes 50 seconds East for a distance of 2642.13 feet to the Southeast corner of said Section 36;

Thence South 89 degrees 20 minutes 22 seconds West for a distance of 2464.87 feet along the south line of said section 36 to the **POINT OF BEGINNING**.

The above-described parcel contains a computed area of 19,326,368 Sq. Ft. (443.67 acres) more or less.

Prepared by: CMX L.L.C.  
7740 N. 16<sup>th</sup> Street  
Suite 100  
Phoenix, Arizona 85020  
Project No. 6785  
June 27, 2006

